

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of: Serial Number: 77/035,984
Filing Date: November 3, 2006
Mark: WHAT ARE YOU WEARING?
Date of Publication: January 15, 2008

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Guage Model,)
)
Opposer,)
)
v.)
)
Cotton Incorporated,)
)
Applicant.)
)
_____)

Opposition No. _____

Filing Date: May 14, 2008

CERTIFICATE OF EXPRESS MAIL

I hereby certify that this correspondence is being deposited with the United States Postal Service via Express Mail in an envelope labeled EQ 433256676 US and addressed to: USPTO, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on May 14, 2008.

Signed: _____

Louis Diep

Transmittal

Please find enclosed the timely submitted Notice of Opposition and \$300.00 filing fee as submitted on Form PTO-2038. A copy of the Notice of Opposition has been timely served upon the Applicant's representative in accordance with 37 C.F.R. 2.119. If you have any questions please do not hesitate to contact the Opposer's undersigned representative.

Respectfully submitted,



Louis Diep



05-14-2008

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NOTICE OF OPPOSITION

Gauge Model ("Opposer"), sole proprietor, owned by Rodney Maxwell at 453 13th Street, Suite 219, San Diego, CA 92101, believes that it will be damaged by the registration of the mark shown in Application Serial No. 77/035,984 and hereby opposes the same.

The grounds for the opposition are as follows:

1. Opposer does business on the Internet using an online electronic commerce storefront located at the web address www.gauge909.com selling cotton apparel, such as tee shirts.
2. Opposer has used the mark WHAT ARE YOU WEARING? on www.gauge909.com in connection with selling products (e.g., cotton tee shirts) since at least October 31, 2005.
3. Opposer has developed and owns valuable good will in the mark WHAT ARE YOU WEARING?.
4. Opposer has filed a U.S. Trademark Application Serial No. 77/421,625 on March 13, 2008 for the mark WHAT ARE YOU WEARING? in International Class 35 for online retail consignment stores featuring clothing, cotton tee shirts, fashion accessories, and jewelry.
5. Cotton Incorporated ("Applicant") has applied for an identical mark WHAT ARE YOU WEARING? in Application Serial No. 77/035,984.
6. Applicant's mark is also in International Class 35 and for "promoting ... products made from cotton," which includes products made from cotton.

7. Opposer believes that Applicant's mark is likely to mislead, deceive, or cause confusion to consumers.

8. Applicant has spent millions of dollars since 2006 in advertising campaigns using the mark WHAT ARE YOU WEARING? to promote products made from cotton, which has likely caused reverse confusion to consumers.

Wherefore, Opposer believes that it will be damaged by the registration of Applicant's mark and requests that the opposition be sustained and the registration of Application Serial No. 77/035,984 be denied.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Louis Diep", is written over a horizontal line.

Louis Diep

Scott S. Kokka

Kenneth R. Backus, Jr.

Abigail E. Lighthart

Attorneys for Opposer

Guage Model

KOKKA & BACKUS, PC

200 Page Mill Road, Suite 103

Palo Alto, CA 94306-2022

Tel: (650) 566-9914

Date: May 14, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Opposition was served on the Applicant on the date indicated below by depositing the same with the U.S. Postal Service, Express Mail, postage prepaid, addressed to the attorney/correspondent of record for the Applicant.

ADRIENNE L. WHITE

WRB-IP LLP

1217 KING STREET

ALEXANDRIA, VA 22314-2926

A handwritten signature in cursive script, reading "Louis Diep", written over a horizontal line.

Louis Diep

Date: May 14, 2008